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BOOK REVIEWS.

EDWARD N. PERKINS, *Editor-in-Charge.*

THE SPECIAL LAW GOVERNING PUBLIC SERVICE CORPORATIONS, And All Others Engaged In Public Employment. By BRUCE WYMAN. New York: BAKER VOORHIS & Co. 1911. Two Volumes. pp. CCXVII, XXVI, 1517.

As one reads this treatise he feels that, notwithstanding the great amount of work involved in its production, the author must have found in his labor a source of unusual interest and pleasure. Not only is the subject treated one of vast importance, whose great problems are now occupying a large part of the attention of our courts, but Professor Wyman holds the enviable position of a pioneer in this field of legal literature. Still, while the lot of a pioneer gives opportunity for much constructive work, it imposes great responsibility. On the whole the careful reader will probably feel that Professor Wyman has fairly seized his opportunity and has acquitted himself creditably under all of the circumstances; and undoubtedly the book will be much used.

Perhaps the reader may think it unfortunate that the author did not compress his material into a single volume. He may well believe that he would thus have gained much, and would have lost nothing of value. The two volumes as published contain some 1724 pages, distributed as follows: preface, 13; table of contents, 43; table of cases, 154; text and footnotes, 1269; appendix, 74; and index, 171. Probably the table of contents could be considerably reduced. The work is divided into books, parts, chapters, topics, and very short sections, each with a separate heading. Then an unnecessary number of cases is cited for a text book. When we want all of the cases on a given point, we now go to the digest, which can supply us with such lists much better than a text book can. The latter should only present a well considered though generous collection of leading cases. The material in the appendix could hardly be improved upon and none of it could well be spared, but probably the index could be simplified and reduced in size. However, most of the condensation could be effected in the text itself and in the footnotes. In the first place the suggested reduction in the number of cases cited would materially reduce the space occupied by footnotes. Furthermore the author is over-fond of long quotations. For instance, in the ten pages from 1055 to 1064 there are five pages of quotations and one of paraphrase; in the nine pages from 1164 to 1172 there are three and a half pages of quotations, and there is practically nothing but a succession of quotations from the top of the page 1036 to the middle of page 1040. Many such quotations could be omitted or put into footnotes. Frequently, also, the author treats subjects at greater length than is necessary. For example, 118 pages are devoted to Part IV, entitled "Justification for Refusing Service," which is not a difficult subject. Chapter XVI, the first chapter in this Part, could be largely if not entirely eliminated, for the propositions there dealt with under the heading "Inexcusable Breaches of Public Duty," are, or could be, dealt with briefly in the subsequent chapters involving

excusable refusals to serve, in order to show the limits of the right to refuse service. All of the other chapters in this Part could also be condensed. Chapter XXI is unnecessarily long, and much of its contents is repeated subsequently. The same is true of chapter XXXI, while the closing chapter repeats much that has been said before. These are extreme examples of the author's tendency to a discursive and over elaborate method.

On the other hand there are chapters in which the material is excellently arranged and presented. Such are chapters XII to XV, and chapters XXXIV and XXXV. Furthermore it is apparent that the author has carefully worked over the material on rate regulation and discrimination used in the book on Railroad Rate Regulation, of which he was a co-author with Professor Beale, and as a consequence this material is better arranged and more concisely presented in the present work.

Again in the present treatise, as in his previous writings, Professor Wyman supports the proposition that public service duties have been and should be imposed at common law upon business whenever monopolistic in fact or in tendency. The reviewer has not seen any case earlier than that of *Allnutt v. Inglis* (1810) 12 East 527, in which there is a judicial expression of opinion that virtual monopoly puts a business under public service duties, and such opinion in that case is expressed as the merest dictum. It is said that Lord Hale expressed a similar view in his treatise *De Portibus Maris*, 1 Harg. Tracts 78, but such is probably not the meaning of his language. Certainly there is nothing in the early cases dealing with the law of common callings as applied to carriers, innkeepers, surgeons, smiths, ferrymen, and the like, to support Professor Wyman's theory, while there seems much in these cases to point to the early conception of *assumpsit* as the basis of the duty of those engaged in common callings to serve all. In the more modern cases dealing with water companies, telephone companies, gas companies, grain elevators, and the like, we find that the duties to serve all reasonably and impartially result from the grant of franchises or of state aid, or have been imposed by statute under the police power. To be sure there is direct modern authority for Professor Wyman's view in such a case as *Inter-Ocean Publishing Co. v. The Associated Press* (1900) 184 Ill. 438; but this case is in the minority and not to be compared, in soundness of reasoning, with such cases as *Ladd v. The Southern Cotton Press and Manufacturing Co.* (1880) 53 Tex. 172, and *Dela-ware, L. & W. R. Co. v. Central Stock Yard and Transit Co.* (1890) 45 N. J. Eq. 50.

The usefulness of this work to the legal profession will depend largely upon the support which the cases in the notes give to the propositions in the text. The reviewer examined the cases cited in four places with the following results. Notes 1 to 4 on page 56 are supposed to deal with the right of the state to aid certain enterprises through taxation. Of these the cases in notes 1 and 3 have nothing to do with taxation, that in note 1 dealing with the right to exercise the power of eminent domain, and that in note 3 holding that it is not within the power of a city under the Michigan Constitution to buy a street railway. Of the seven cases cited to support the text in § 367, that in note six in a way supports the text; that in note five seems to have no bearing whatever on the question; that

in note four directly contradicts the text in a dictum; those in notes one and three deal with the question whether the plaintiff was an invited person and do not pass upon the question whether the defendant was bound to admit him; those in note two deal with the same question as that in note one, but there is a dictum in one of them to the effect that the railroad company was under a duty to admit a person in the plaintiff's position. The notes at the foot of page 407 are cited to support the proposition that a railroad is bound to accept all express companies applying to be carried. It should be noted that the second named case and the Texas case are based upon statutes. The proposition for which the New Jersey case is cited is not in fact involved or suggested in the case. The Pennsylvania case supports the text. The English cases cited do not seem to pass upon the duty of a railroad to carry express companies, but discuss the railroad's duty not to discriminate in its charges when the railroad carries for those who collect goods at one end of the transit and deliver them at the other end. In note four on page 1101 the Minnesota and the Virginia case cited alone support the text. In the Maine and Wisconsin cases the courts refused to pass upon the question discussed in the text, finding it unnecessary to their decisions. The Massachusetts case has nothing to do with the subject under discussion, while the California case seems to be in conflict with the text.

It is a pity that, through lack of critical proof reading or from some other cause, the style of this work is sometimes marred by bad sentences, such as the fifth sentence in § 860, the fourth sentence in § 1130, the sixth sentence in § 1160, the second sentence in § 1198, the sixth sentence in § 1325, and the second sentence in § 1361. But when all is said it is still true that the author has made the legal profession his debtor by attempting a systematic and complete presentation of the law of public service. Undoubtedly lawyers and students will find his book as a whole both interesting and instructive.

C. K. B.

COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS. Fifth edition, By JOHN F. DILLON. Boston: LITTLE, BROWN & Co. 1911. Five Volumes. pp. lxi, xiii, xii, xiii, 3064, 738.

For forty years the legal profession has been under obligation to Judge Dillon for the fruits of his researches in the law of municipal corporations. The influence of his work in guiding the trend of judicial decision is apparent from the almost countless instances in which the courts have cited the author's statement of general principles of law, his criticism of what he considers judicial aberrations, his convictions upon issues of public policy and his suggestions as to the considerations which should control the decision of questions which had not then arisen for adjudication. Propositions announced in the first two editions of 1872 and 1873, without citation of authority, because there was none to cite, are repeated in the later editions of 1881, 1890, and 1911, buttressed by decisions grounded upon the same assertion found in the earlier edition. Such scientific satisfaction is possible only to an author who appreciates with reverent regard the distinction between a treatise and a digest or an encyclopedia, and who stalwartly declines to compile a catalogue in the name of scholarly achievement. Judge Dillon's work compels